

Nova Law Review

Volume 42, Issue 1

2018

Article 3

Going Under The Hood: The Winners And Losers Of Florida's Transportation Network Companies Law

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Abstract

Florida House Bill 221 was signed into law on May 9, 2017.¹ With the enactment of the Bill, Florida joins forty-six other states, and the District of Columbia, in enacting statewide legislation to legalize and regulate transportation network companies ("TNC"), such as Uber and Lyft.

KEYWORDS: transportation, fees, taxes

GOING UNDER THE HOOD: THE WINNERS AND LOSERS OF FLORIDA'S TRANSPORTATION NETWORK COMPANIES LAW

CARLOS IBARCENA*

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I. INTRODUCTION

Florida House Bill 221 was signed into law on May 9, 2017.¹ With the enactment of the Bill, Florida joins forty-six other states, and the District

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of Columbia, in enacting statewide legislation to legalize and regulate transportation network companies (“TNC”), such as Uber and Lyft.² The law will provide these companies with a uniform set of operating standards throughout the state.³ The new law contains provisions addressing key policy arguments, which include the classification of TNC drivers, insurance requirements, background check requirements, administrative and reporting requirements, and the regulatory authority under the new regulatory scheme.⁴ The law, which preempts all local regulations enacted before the law’s effective date and puts TNCs exclusively under state regulation going forward, carves out a small, but significant, exception allowing the operating authorities of airports and seaports to retain control over setting pickup fees and logistics within such locations.⁵

This Comment will provide an overview of Florida’s TNC law and the current landscape of TNC regulations in Florida’s airports.⁶ Part II will provide background on the local regulatory landscape before the arrival of the state’s law and will give a brief background on statewide laws in the United States.⁷ Part III will provide a brief overview on key policy issues in Florida law.⁸ Part IV will analyze the operation and the impact of TNCs at airports.⁹ Part V will discuss potential gaps in Florida’s law.¹⁰ Lastly, Part VI will present a conclusion.¹¹

1. Act effective July 1, 2017, ch. 2017-12, § 2, 2017 Fla. Laws 11 (codified at FLA. STAT. § 627.748).

2. GINGER GOODIN & MAARIT MORAN, TRANSPORTATION NETWORK COMPANIES 1 (2016), <http://policy.tti.tamu.edu/wp-content/uploads/2017/03/TTI-PRC-TNCs-SBC-031417.pdf>; *Transportation Network Company (TNC) Legislation*, TEXAS A&M TRANSP. INST., <http://www.tti.tamu.edu/policy/technology/tnc-legislation/> (last visited Dec. 31, 2017).

3. See Act effective July 1, 2017, ch. 2017-12, § 1(15), 2017 Fla. Laws.

4. See *id.* § 1(7)–(11).

5. See *id.* § 1(15)(a)–(b).

6. See *infra* Parts II–VI.

7. See *infra* Part II.

8. See *infra* Part III.

9. See *infra* Part IV.

10. See *infra* Part V.

11. See *infra* Part VI.

II. THE ARRIVAL OF FLORIDA'S TNC LAW

A. *Background: The Road to State Law*

The regulation of TNCs has been a hotly contested subject, not only in Florida, but also throughout the United States and the world.¹² The arrival of TNCs in Florida created a political storm for local politicians and regulators.¹³ Uber, the largest of the TNCs, and its close rival, Lyft, arrived first in Miami, Florida around 2014.¹⁴ When they arrived, there were no transportation or for-hire regulations that fit the operating model of TNCs.¹⁵ For-hire regulations, those applicable to taxicabs, appeared to be the closest fit, and thus were applied.¹⁶ However, TNCs did not conform to these regulations and continued to operate illegally.¹⁷ In willfully choosing to not abide by for-hire regulations, the TNCs gained a competitive advantage over

12. See GOODIN & MORAN, *supra* note 2, at 1; Brian O'Keefe & Marty Jones, *Uber's Tax Shell Game*, FORTUNE, Nov. 1, 2015, at 115, 117.

13. See Editorial, *What Tallahassee Should Do on Uber*, SUN SENTINEL (Fla.), Jan. 29, 2016, at 18A; Douglas Hanks, *In Email Blitz, Uber Threatens to Pull Out of Miami-Dade*, MIAMI HERALD (Jan. 14, 2016, 2:26 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article54698295.html>.

14. Douglas Hanks, *Miami-Dade Chairman Backs Off in Uber Fight, But Sticking Points Remain*, MIAMI HERALD (Jan. 15, 2016, 5:46 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article54953260.html>; Brian Solomon, *Lyft Rides Tripled Last Year, but Remains Far Behind Uber*, FORBES: TECH (Jan. 5, 2017, 3:05 PM), <http://www.forbes.com/sites/briansolomon/2017/01/05/lyft-rides-tripled-last-year-but-remains-far-behind-uber/>. Because both Lyft and Uber are privately held companies, there is limited information on their financials and operations:

Lyft remains a distant second place to Uber. In the month of December, Uber completed 78 million rides in the U.S. compared with Lyft's 18.7 million. That means Uber is more than four times bigger than Lyft in each company's home market. Abroad, Uber has tens of millions of more rides. FORBES estimates Uber completed more rides globally in the first two months of 2016 than Lyft did all year.

Solomon, *supra*; see also Harriet Taylor, *Uber and Lyft Are Getting Pushback from Municipalities All over the US*, CNBC: TECH (Sept. 2, 2016, 1:32 PM), <http://www.cnbc.com/2016/09/02/uber-and-lyft-are-getting-pushback-from-municipalities-all-over-the-us.html>.

15. See GOODIN & MORAN, *supra* note 2, at 1; Patricia Mazzei, *Miami-Dade Looks to Other Cities in Struggle to Deal with Lyft, Uber*, MIAMI HERALD (June 21, 2014, 6:16 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article1967467.html>. Lyft's director of government relations stated that local regulations did not address the business model of TNCs. Mazzei, *supra*.

16. See Mazzei, *supra* note 15. "Miami-Dade has treated the companies as unlicensed taxi services — and [it is] hardly the only government to do so." *Id.*

17. See Benjamin Edelman, *Uber Can't Be Fixed-It's Time for Regulators to Shut It Down*, HARV. BUS. REV.: BUS. L. (June 21, 2017), <http://www.hbr.org/2017/06/uber-cant-be-fixed-its-time-for-regulators-to-shut-it-down/>; Mazzei, *supra* note 15.

the local for-hire transportation industry, in part, through the cost-savings derived from their non-compliance with regulatory costs.¹⁸ The management-led rebellion against the application of local regulations to TNC drivers, promoted by the payment of fines for drivers, appeared to be the pre-determined and highly criticized strategy behind the entry to all new markets.¹⁹ Pushing local regulations aside, TNCs aimed to hook their users with low fares and better service.²⁰ Once hooked, TNCs would supplement their regulatory crusade by mobilizing their loyal user to demand regulatory change from lawmakers.²¹ Grassroots lobbying was effective and led to the creation of local TNC regulations; these regulations allowed TNCs to operate legally, if they met the requirements.²²

The enactment of local ordinances was not widespread and some Florida counties refused to provide TNCs a pathway to operate legally.²³ Even within the municipalities that enacted local TNC regulations, the regulations varied significantly; in 2016, state legislators sought to put an end to the chaos by suggesting the first proposals for the statewide regulation of TNCs²⁴. However, the Senate struck it down after the bill passed the House.²⁵ Undeterred, and with a new pro-TNC Senate President, the Florida Legislature was able to pass House Bill 221 and bring the TNC regulatory landscape to its current form.²⁶ The Bill was signed into law on May 9, 2017.²⁷

18. See Edelman, *supra* note 17.

19. See *id.* (speaking on Uber's fight against regulators); Patricia Mazzei, *Miami-Dade Escalates Penalties Against Renegade Lyft Drivers*, MIAMI HERALD (June 6, 2014, 12:01 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article1965588.html>; Alyson Shontell, *Cops in Miami Are Running a Sting to Catch Lyft Drivers*, BUS. INSIDER (June 7, 2014, 11:36 AM), <http://www.businessinsider.com/miami-cops-are-running-a-sting-to-catch-lyft-drivers-2014-6>.

20. See Hanks, *supra* note 14.

21. See *id.*

22. Order Granting Defendant's Motion to Dismiss at 9, *Miadeco Corp. v. Miami-Dade Cty.*, No. 16-21976-CIV (S.D. Fla. Apr. 10, 2017). "In response to lobbying and changes in the for-hire transportation market, the County exercised its legislative prerogative to create a separate system of regulations for TNEs." *Id.*

23. See Michael Auslen et al., *It's Up to Rick Scott Now: Should Local Governments Be Allowed to Regulate Uber?*, MIAMI HERALD (Apr. 19, 2017, 4:36 PM), <http://www.miamiherald.com/news/business/article145556644.html>.

24. See Michael Auslen, *Uber Bill Easily Clears First Hurdle*, BRADENTON HERALD: ST. POL. (Feb. 8, 2017, 5:26 PM), <http://www.bradenton.com/news/politics-government/state-politics/article131538319.html>.

25. *Id.*

26. Act effective July 1, 2017, ch. 2017-12, § 2, 2017 Fla. Laws 11 (codified at FLA. STAT. § 627.748); see also Daniel Ducassi, *Brandes: 'This Is the Year for Ride-Sharing in Florida'*, POLITICO: FLA. (Jan. 11, 2017, 4:38 PM),

B. *Florida Joins the Ninety Percent*

In 2013, the California Public Utilities Commission used its authority to legalize TNCs statewide “and define[d] the term *transportation network company*,” now commonly used to define ride-sharing companies such as Uber and Lyft.²⁸ Soon after, in 2014, Colorado became the first state to enact state-level legislation authorizing and regulating TNCs.²⁹ Statewide TNC legislation grew from thirty-three in May 2016 to forty-three in March 2017.³⁰ As of October 2017, forty-eight states, and the District of Columbia, have enacted some level of TNC legislation.³¹ The lonely hold-out states are Oregon and Vermont.³² No two TNC state laws are the same; some laws have similar or equivalent provisions while others differ, but the key policies in all legislative efforts involve the level of regulation, power of local authorities, the taxicab industry, and public safety.³³ State lawmakers faced a challenging task in writing a comprehensive law that did not overly interfere with a free-market economy.³⁴

Florida’s TNC law established a uniform set of regulations for TNCs across the state.³⁵ The key policies addressed in the law include the classification of TNC drivers as independent contractors and minimum insurance requirements.³⁶ Notably, the law does not require TNCs or TNC drivers to obtain an initial or annual permit fee before beginning to operate; lawmakers only mandated a bi-annual submission of a compliance report prepared by an independent auditor.³⁷ In addition, the law expressly preempts all existing and future local law, with the exception of airports and seaports, which have the authority to set *reasonable pickup fees*.³⁸

<http://www.politico.com/states/florida/story/2017/01/brandes-this-is-the-year-for-ride-sharing-in-florida-108663>.

27. Act effective July 1, 2017, ch. 2017-12, § 2, 2017 Fla. Laws 11.

28. GOODIN & MORAN, *supra* note 2, at 4.

29. *Id.* at 9.

30. *See id.* at 1, 5.

31. *Transportation Network Company (TNC) Legislation*, *supra* note 2.

32. *See id.*

33. *See* GOODIN & MORAN, *supra* note 2, at 6–8.

34. *See* Editorial, *supra* note 13.

35. Act effective July 1, 2017, ch. 2017-12, § 2, 2017 Fla. Laws 11.

36. *Id.* § 1(9)(c)–(d); GOODIN & MORAN, *supra* note 2, at 9.

37. Act effective July 1, 2017, ch. 2017-12, § 1(11)(e), 2017 Fla. Laws 9.

38. *Id.* § 1(15)(a)–(b).

III. FLORIDA'S TNC LAW

A. *TNC Drivers as Independent Contractors*

Uber has vehemently stressed that it is a technology company, not a transportation provider, and Florida lawmakers agree.³⁹ The ramifications, both legal and financial, between the classification of independent contractor and employee for the TNCs are tremendous.⁴⁰ Under Florida's TNC law, TNC drivers are classified as independent contractors, if the following four conditions are satisfied:

- (a) The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network.
- (b) The TNC does not prohibit the TNC driver from using digital networks from other TNCs.
- (c) The TNC does not restrict the TNC driver from engaging in any other occupation or business.
- (d) The TNC and TNC driver agree in writing that the TNC driver is an independent contractor with respect to the TNC.⁴¹

Two parts of the test, sub-subsections (a) and (c), share TNC's marketing efforts towards drivers: the liberty to decide when to drive and to do so as a supplemental income.⁴² Furthermore, providing a source of supplemental income for constituents was one of the purposes behind enacting the law, enabling TNCs to operate under a set of uniform regulations.⁴³ Moreover, the liberty of TNC drivers to schedule their driving

39. See Act effective July 1, 2017, ch. 2017-12, § 1(1)(e), 2017 Fla. Laws 2; GOODIN & MORAN, *supra* note 2, at 3-2; Dick Hogan, *Uber Ride Service Would Bring Controversy*, NEWS-PRESS (Sept. 10, 2014, 10:53 PM), <http://www.news-press.com/story/money/2014/09/10/uber-ride-service-bringcontroversy/15421511/>.

40. See ZACH SCHILLER & CARL DAVIS, INST. ON TAX'N & ECON. POL'Y, TAXES AND THE ON-DEMAND ECONOMY 1, 7 (2017), <http://www.itep.org/wp-content/uploads/ondemandeconomytaxes0317.pdf>; GOODIN & MORAN, *supra* note 2, at 9.

41. Act effective July 1, 2017, ch. 2017-12, § 1(9)(a)–(d), 2017 Fla. Laws 7–8.

42. *Id.*; see also Hogan, *supra* note 39; Florida House, *Senate Pass Rideshare Legislation with Overwhelming Support*, FLA. TREND (Apr. 19, 2017), <http://www.floridatrend.com/article/21980/florida-house-senate-pass-rideshare-legislation-with-overwhelming-support>.

43. See Florida House, *Senate Pass Rideshare Legislation with Overwhelming Support*, *supra* note 42; Hogan, *supra* note 39.

times, as required by the statute, is in line with Florida case law previous to the passing of law.⁴⁴

Sub-subsection (b) of the test touches the highly competitive nature of TNCs.⁴⁵ TNC rivals, Uber and Lyft, have always looked to gain a competitive advantage over the other, though the rivalry reached new heights when it was alleged that the TNCs participated in potentially illicit recruitment practices.⁴⁶ It is unknown whether these practices, or similar ones, remain in effect or, if they are, whether courts would find them to be in violation of the statute.⁴⁷

The last sub-subsection, (d), was expressly addressed in *McGillis v. Department of Economic Opportunity*,⁴⁸ where the court affirmed the decision of Florida's Department of Economic Opportunity that a former Uber driver was not an employee for purposes of reemployment assistance "[b]ecause the parties' contract explicitly provides that an Uber driver is not an employee and the nature of the parties' relationship was consistent with this classification."⁴⁹ Similar agreements between Uber and its drivers have been upheld by courts to compel arbitration.⁵⁰ As of now, no court has ruled TNC drivers as employees, though the issue is being litigated in federal courts.⁵¹ It appears TNC drivers will be categorized as independent-contractors under Florida's TNC law, although any change in case law or

44. See Act effective July 1, 2017, ch. 2017-12, § 1(9)(a), 2017 Fla. Laws 7; *McGillis v. Dep't of Econ. Opportunity*, 210 So. 3d 220, 222 (Fla. 3d Dist. Ct. App. 2017); Hogan, *supra* note 39.

45. See Act effective July 1, 2017, ch. 2017-12, § 1(9)(a)–(d), 2017 Fla. Laws 7–8; Maya Kosoff, *Uber Used a Secret Program Called "Hell" to Track Rival Drivers*, VANITY FAIR (Apr. 13, 2017, 8:52 AM), <http://www.vanityfair.com/news/2017/04/uber-used-a-secret-program-called-hell-to-track-rival-drivers>.

46. See Kosoff, *supra* note 45.

47. See Act effective July 1, 2017, ch. 2017-12, § 1(9)(a)–(d), 2017 Fla. Laws 7–8; *McGillis*, 210 So. 3d at 222. It is unknown whether a Florida court, which held that an Uber driver was not an employee, before the enactment of Florida's TNC statute, considered the sabotage allegations against Uber and Lyft. *McGillis*, 210 So. 3d at 222. "Drivers are free to switch between using Uber's driver application and the application of a competitor, such as Lyft." *Id.*; Kosoff, *supra* note 45; Casey Newton, *This Is Uber's Playbook for Sabotaging Lyft*, VERGE (Aug. 26, 2014, 3:42 PM), <http://www.theverge.com/2014/8/26/6067663/this-is-ubers-playbook-for-sabotaging-lyft> (detailing Uber's Operation SLOG).

48. 210 So. 3d 220 (Fla. 3d Dist. Ct. App. 2017).

49. *Id.*; see also Fla. CS for HB 221, § 1(9)(d).

50. See *Suarez v. Uber Techs., Inc.*, No. 16-13263, 2017 WL 2197812, at *1 (11th Cir. Ct. App. May 18, 2017) (per curiam); *Richemond v. Uber Techs., Inc.*, No. 16-cv-23267, slip op. at 8 (S.D. Fla. Jan. 27, 2017).

51. Erez Aloni, *Pluralizing the "Sharing" Economy*, 91 WASH. L. REV. 1397, 1418 (2016).

federal law could retroactively entitle a TNC driver to rights under state and federal employment statutes.⁵²

B. *Minimum Insurance Requirements*

When it came to regulating TNCs, TNCs and insurance were inseparable.⁵³ The new law clearly details insurance requirements and both operational and legal clarifications for insurers.⁵⁴ The clarification provides relief to TNC drivers and insurers.⁵⁵ In the past, insurance issues included coverage gaps and amounts, and the absence of a regulatory framework led drivers to commit fraud by omitting information from insurers.⁵⁶ The law aims to combat omissions to insurers by mandating that a TNC driver, or the TNC on behalf of the driver, carry insurance which “[r]ecognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation.”⁵⁷ Moreover, the insurance requirement provision of the law adopts a similar classification of TNC activity to that of the one provided as guidance by the National Association of Insurance Commissioners (“NAIC”) and mirrors that of other states’ TNC laws.⁵⁸ The classification of each activity period corresponds to distinct insurance requirements.⁵⁹ Florida’s law establishes the minimum insurance amounts to be maintained during two distinct TNC activity periods: (1) when “a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride” and (2) when a “TNC driver is engaged in a prearranged ride.”⁶⁰ The insurance maintained by either the TNC, the TNC driver, or a combination of both can satisfy the requirements.⁶¹

52. *McGillis*, 210 So. 3d at 221, 225–26; *see also* SCHILLER & DAVIS, *supra* note 40, at 4, 7.

53. *See* Editorial, *supra* note 13.

54. *See* Act effective July 1, 2017, ch. 2017-12, § 1(7)(b)(1)–(8)(b)(f), 2017 Fla. Laws 4–6 (codified at FLA. STAT. § 627.748); Ellen Huet, *Rideshare Drivers Still Cornered into Insurance Secrecy*, FORBES: TECH (Dec. 18, 2014, 2:45 PM), <http://www.forbes.com/sites/ellenhuet/2014/12/18/uber-lyft-driver-insurance/>.

55. *See* Ducassi, *supra* note 26.

56. *See* Huet, *supra* note 54.

57. Act effective July 1, 2017, ch. 2017-12, § 1(7)(a)(1), 2017 Fla. Laws 4; *see also* Huet, *supra* note 54.

58. *See* GOODIN & MORAN, *supra* note 2, at 8–9.

59. *Id.*

60. Act effective July 1, 2017, ch. 2017-12, § 1(7)(b)(1)–(2), 2017 Fla. Laws

4.

61. *Id.* § 1(7)(c)(2)(a)–(c).

C. *Reporting Requirements*

Florida's TNC law does not require TNCs to receive approval of new law.⁶² The only administrative regulatory compliance required of TNCs is the submission of "an examination report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC has maintained compliance with" two provisions of the law for the preceding two years of operation, to the Department of Financial Services.⁶³ The first provision covers insurance disclosures, and the second, exclusions and TNC driver requirements.⁶⁴ If the report discloses that the TNC is found to have been non-compliant during the examination period, the TNC will be fined \$10,000.⁶⁵ In the case of non-compliance, another report due the following January, is required.⁶⁶ A \$20,000 fine is imposed for non-compliance discovered in the additional report.⁶⁷

D. *Pay to Operate: Fees and Tailor-Made Taxes*

1. The Regulatory Cost to Operate for TNCs

The costs and administrative requirements necessary to begin operating legally under enacted state TNC laws vary, as does the regulatory authority assigned to oversee permitting.⁶⁸ Typically, before a permit to operate is granted, the TNC must submit to the relevant authority "proof of compliance with requirements outlined in the legislation, such as insurance or driver information requirements."⁶⁹ In addition, some states require TNCs to pay a fee as part of the initial application process.⁷⁰ The fee is referred to,

62. See *id.* § 1(2). TNCs do not have to submit the examination report required by law until January 1, 2019. *Id.* § 1(11)(e).

63. *Id.*

64. See Act effective July 1, 2017, ch. 2017-12, § 1(8), (11), 2017 Fla. Laws 6, 8.

65. *Id.* § 1(11)(f).

66. *Id.*

67. *Id.*

68. Compare N.C. GEN. STAT. § 20-280.3 (2017) (\$5000 application fee plus an annual permit fee of \$5000), with COLO. REV. STAT. § 40-10.1-606 (2016) (annual permit fee of \$111,250). Examples of regulatory authorities under TNC state laws include: Virginia and West Virginia use the Department of Motor Vehicles; Arizona, Delaware, and South Carolina use the Department of Transportation; California and Ohio use the Public Utilities Commission; Nevada used the Transportation Authority. GOODIN & MORAN, *supra* note 2, at 8.

69. GOODIN & MORAN, *supra* note 2 at 8.

70. See *id.*

generally, as a license or permit fee.⁷¹ Annual fees range from \$500 in Montana to \$111,250 in Colorado.⁷² Though Colorado's flat annual fee is currently the highest, and may be adjusted to cover the direct and indirect costs associated with implementing the TNC law, the formulation of annual permit fees prescribed by some states may surpass that figure.⁷³ That is because "[i]n some states the permit fees are proportional to the size or extent of a TNC operation."⁷⁴ For example, Georgia, Michigan, and Kentucky base their annual fee on a tier-system categorized by the number of cars operating under the TNC.⁷⁵ Of these, Georgia's *master license fee* is the most expensive of the three states, costing \$300,000 to register 1001 cars or more, which is ten times more expensive than the cost to register the same amount of cars in Michigan, and over thirteen times more expensive than Kentucky.⁷⁶

2. Custom Made TNC Taxes

With only eight states currently applying sales or a gross receipt tax on taxi fares, TNCs do not have an overwhelming exposure to such tax.⁷⁷ As such, some states have taken the initiative to design TNC specific taxes to go along with TNC laws.⁷⁸ Nevada and South Carolina levy, on TNCs, an assessment fee based on their gross revenue.⁷⁹ South Carolina has set the fee at 1% of gross trips, while Nevada has set the amount at 3%.⁸⁰ Some states and cities have imposed a per-ride fee or a variation thereof on TNCs.⁸¹

71. *Id.* (license in Georgia and permit in Colorado).

72. *Id.*

73. *See id.* If a TNC had over 1000 cars in Georgia, the annual license fee would cost \$300,000, surpassing Colorado's flat annual fee of \$111,250. GOODIN & MORAN, *supra* note 2, at 8.

74. *Id.*

75. MICH. COMP. LAWS § 257.2104(3) (2016); 601 KY. ADMIN. REGS. 1:113 § 2(4)(c) (2017); GOODIN & MORAN, *supra* note 2, at 8.

76. *See* MICH. COMP. LAWS § 257.2104(3) (\$30,000 for more than 1000 vehicles); 601 KY. ADMIN. REGS. 1:113 § 2(4)(c) (\$22,500 for 501 or more vehicles); GOODIN & MORAN, *supra* note 2, at 8.

77. *See* SCHILLER & DAVIS, *supra* note 40, at 3.

78. *Id.* at 4.

79. *See* GOODIN & MORAN, *supra* note 2, at 8; SCHILLER & DAVIS, *supra* note 40, at 4.

80. *See* GOODIN & MORAN, *supra* note 2, at 8; SCHILLER & DAVIS, *supra* note 40, at 4–5.

81. SCHILLER & DAVIS, *supra* note 40, at 4–5. Massachusetts imposes a twenty-cent per-ride fee, while Pennsylvania imposes a 1.4% gross receipt tax only on rides that originate in Philadelphia; Seattle, which has not been preempted by state law, imposes a similar fee at twenty-four cents per-ride. *See id.*; *Transportation Network Companies*,

These variable annual fee structures tie fee amounts to the growth and success of TNCs, thus if the exponential growth of TNCs continues, so will the fee revenue of these states.⁸² The regulatory enforcement of TNCs comes at a cost, hence, states use the fees collected to help cover those costs.⁸³ In states where annual fees could become significant and surpass enforcement costs, fee funds are distributed back to municipalities in proportion to population or TNC trip origination.⁸⁴ Aside from administrative and operational enforcement, TNC fees can be applied in ways that promote the public welfare.⁸⁵ Seattle has mandated, in addition to a fourteen-cent share on all TNC rides originating in the city, that TNCs pay ten cents per-ride for the Wheelchair Accessible Services Fund.⁸⁶

IV. AIRPORTS & TNCs: A LOVE-HATE RELATIONSHIP

A. *Background: Airports and Revenue*

Local governments, generally, are concerned only with activities that are in the best interest of the people they represent.⁸⁷ One such interest is the establishment, operation, and management of a public airport.⁸⁸ The government units, which own and operate public airports across the United States, vary, but they are essentially cities or counties.⁸⁹ A popular form of airport governance has been the creation of subunits of local governments, commonly known as airport authorities.⁹⁰ The authority may also possess the power to raise funds by taxation or the issuance of bonds, if expressly provided by the statute creating the airport authority.⁹¹ Airport authorities are given wide latitude on their management of day-to-day operations,

SEATTLE.GOV: BUS. REG., <http://www.seattle.gov/business-regulations/taxis-for-hires-and-tncs/transportation-network-companies/tnc-companies> (last visited Dec. 31, 2017).

82. See GOODIN & MORAN, *supra* note 2, at 8; SOLOMON, *supra* note 14.

83. GOODIN & MORAN, *supra* note 2, at 8; see, e.g., MICH. COMP. LAWS § 257.2104(3)–(4) (2017).

84. See e.g., GOODIN & MORAN, *supra* note 2, at 8 (South Carolina distributes surplus TNC funds to municipalities in proportion to trip origination).

85. See e.g., SCHILLER & DAVIS, *supra* note 40, at 5 (local government imposed per-ride fee to be used on local transportation projects and transportation for the disabled).

86. *Transportation Network Companies*, *supra* note 81.

87. See e.g., Hunter Bacot & Jack Christine, *What's So "Special" About Airport Authorities? Assessing the Administrative Structure of U.S. Airports*, 66 PUB. ADMIN. REV. 241, 241 (2006).

88. See 8A AM. JUR. 2D *Aviation* § 88, Westlaw (database updated May 2017).

89. Bacot & Christine, *supra* note 87, at 241.

90. *Id.* at 242.

91. See 8A AM. JUR. 2D *Aviation* § 88, *supra* note 88.

though “the U.S. Federal Aviation Administration (“FAA”) has significant input into airport operations through regulatory direction.”⁹² To receive federal funding, airports must comply with assurances tied to the grants.⁹³ In the case of FAA grants, the airport must “maintain a schedule of charges for use of facilities and services at the airport—[] that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection.”⁹⁴ In light of all the applicable restrictions, airport operators have become cost-effective and have looked to increase non-aeronautical revenue.⁹⁵

Almost all airports in the United States receive federal funding, but the majority of “their operational revenue come[s] . . . from rents and fees paid by . . . aeronautical and non-aeronautical” entities.⁹⁶ As operators, airport authorities have the power to impose fees and other operational directives on commercial businesses operating within the airport facilities.⁹⁷ Airports receive revenue from two general groups of users: aeronautical users, which are commercial airlines, and non-aeronautical users.⁹⁸ Non-aeronautical businesses include car rental companies, parking lots, restaurants, gift shops, and ground transportation services.⁹⁹

Non-aeronautical revenue is not regulated as aeronautical revenue, coming from commercial airlines, is regulated.¹⁰⁰ “[F]ees charged to non-aeronautical users are not subject to the [FAA] reasonableness requirement or the Department of Transportation Policy on airport rates and charges”¹⁰¹ The FAA has limited its input regarding non-aeronautical revenues to interpreting the *self-sustaining* requirement to mandate that airports charge non-aeronautical users fair market value for the use of the airport’s facilities.¹⁰² The flexibility and ability of airlines to challenge fees can serve as a deterrent to airports overcharging since an airport’s non-compliance with the reasonable fee assurance can result in a breach of the contractual

92. Bacot & Christine, *supra* note 87, at 241.

93. *Id.*

94. 49 U.S.C. § 47107(a)(13)–(A) (2012).

95. Maria Z. Nucci, *Allocation of Economic Risk in Nonaeronautical Airport Revenue Contracts*, 16 AIR & SPACE LAW., Winter 2002, at 6.

96. *Id.*

97. *See id.* at 7.

98. *Id.* at 6.

99. *See* Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth., 825 F.2d 367, 369 (11th Cir. 1987); Bacot & Christine, *supra* note 87, at 241.

100. *See* Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7721 (Feb. 16, 1999).

101. *Id.*

102. *Id.*

grant.¹⁰³ Unlike airlines, non-aeronautical businesses do not have the same recourses available to challenge airport fees, which has resulted in litigation.¹⁰⁴ Courts have given airport regulations great deference, holding them to be constitutional so long as the authority promulgating them can point the regulation to being rationally related to a legitimate objective.¹⁰⁵

B. *The Arrival of TNCs at Airports*

The growth of TNCs, such as Uber and Lyft, has been exponential, reportedly gathering up “as much as one-fourth of the U.S. ride-hailing market.”¹⁰⁶ One customer segment TNCs have been aggressively pursuing has been business travelers, successfully beating out taxis in the competition for the profitable customer segment.¹⁰⁷ A component behind the success of TNCs in capturing the business traveler segment has been their slow, but persistent, entry into airports.¹⁰⁸ Airports represent lucrative opportunities for TNCs, but airports have been reluctant in opening their doors to TNCs.¹⁰⁹ Though it is not a one-way street, airports also look at TNC fees as a potential significant revenue stream.¹¹⁰ TNC fees provide a new revenue stream for airports, but it is not always at a net increase to the airport’s overall revenue.¹¹¹ More passengers taking TNCs to the airport translates into fewer parking, taxicab, and car rental fees for airports.¹¹² These fees are major components of an airport’s non-aeronautical revenue; “[l]ast year, the

103. *See id.* at 7720, 7723.

104. *See Alamo*, 825 F.2d at 370.

105. *See id.* at 373–74; *Gannett Satellite Info. Network, Inc. v. Metropolitan Transp. Auth.*, 745 F.2d 767, 775 (2d Cir. 1984).

106. SCHILLER & DAVIS, *supra* note 40, at 10.

107. Kerry Close, *Why You Can’t Take an Uber Home from the Airport*, TIME: MONEY (July 7, 2016), <http://www.time.com/money/4396248/uber-lyft-ban-airport/>.

108. *See* Jenni Bergal, *Airport Parking Takes Hit from Uber, Lyft*, PEW CHARITABLE TR.: STATELINE (July 18, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/07/18/airport-parking-takes-hit-from-uber-lyft>. In the United States, “Lyft has agreements with nearly 240 airports and Uber has agreements with more than a hundred.” *Id.*

109. Close, *supra* note 107. Airports represent a key portion of the travel market that TNCs are aggressively pursuing, in part, by focusing on business travelers because 11% of them use TNCs. *Id.*

110. *See* Andrea Ahles, *DFW Won’t Raise Parking Rates Again, and You Can Thank Uber and Lyft*, FORT WORTH STAR-TELEGRAM (June 29, 2017, 10:57 AM), <http://www.star-telegram.com/news/business/aviation/sky-talk-blog/article158814344.html> (explaining that revenue from TNC fees will have nearly doubled in three years).

111. Bergal, *supra* note 108.

112. *Id.*

\$3.5 billion in fees represented 41[%] of the \$8.5 billion in U.S. airport revenue not related to airlines.”¹¹³

Parking related fees have been a large revenue stream for airports for many years, and now make up nearly 20% of non-aeronautical revenue for airports in the United States.¹¹⁴ In some cases, car rental fees provide an even larger revenue stream for airports.¹¹⁵ For example, at Fort Lauderdale-Hollywood International Airport (“FLL”), revenue from car rental fees is “the largest source of revenue[,]” making up about 30% of the airport’s total operating revenue.¹¹⁶ Likewise, parking fees also provide a significant revenue stream for airports, “typically represent[ing] between one-fifth and one-quarter of that revenue category.”¹¹⁷ The impact of TNCs on airport revenues has not been fully determined because TNCs have only been operating under formal agreements with airports for a short period of time.¹¹⁸ Nonetheless, the current reduction in fees, whether short or long term, have airport operators looking to offset the losses with TNC fees.¹¹⁹ In addition, as airport operators, authorities must ensure that TNCs are abiding by the regulations of the airport, not only for economic reasons, but also for safety, security, and general operational matters.¹²⁰ The enforcement of TNCs requires “increased staffing costs to oversee ride-hailing operations and increased curbside congestion, mean[ing] less money for the airport and other public transportation services that airport revenue subsidizes.”¹²¹

Maintaining certain revenue levels for airports is also of critical importance to maintaining operations, covering debt-servicing, and fulfilling certain federal grant assurances.¹²² The reductions in revenue seen from increases in the use of TNCs have not yet proved to be a financial risk for airports, in part, because airports are subsidizing the reductions with fees charged to TNCs.¹²³ For example, the Dallas/Fort Worth Airport faced a

113. *Id.*

114. *Id.*

115. See BROWARD CTY. AVIATION DEP’T, FINANCIAL STATEMENTS FOR THE YEARS ENDED SEPTEMBER 30, 2016 AND 2015 13 (2017), <http://www.broward.org/Airport/About/Documents/Fsigned03272017.pdf>.

116. *Id.*

117. Bergal, *supra* note 108.

118. *Id.*

119. *Id.*

120. See *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 825 F.2d 367, 371 n.4 (11th Cir. 1987).

121. Sandra Tan, *NFTA Fears \$2 Million in Lost Airport Revenue Because of Uber, Lyft*, BUFF. NEWS (July 6, 2017), <http://www.buffalonews.com/2017/07/06/nfta-fears-2-million-airport-revenue-loss-due-uber-lyft-services/>.

122. See 49 U.S.C. § 47107(b) (2012); *Alamo Rent-A-Car, Inc.*, 825 F.2d at 371 n.4.

123. See Bergal, *supra* note 108.

shortfall in parking fee projections, but will not raise parking rates for the first time in five years thanks to the increase in the airport's ground transportation revenue, which has benefitted from TNC fees.¹²⁴ For airport authorities looking at the long term coexistence of the economic demands of their airports and TNC fees, it is "appropriate for the [a]uthority to factor in future development plans when setting user fees."¹²⁵ The relationship between ground transportation revenue and capital expenditures does not have to be perfectly aligned since one revenue stream can be used to complement or subsidize other unrelated revenue streams, like fees charged to airlines.¹²⁶ In subsidizing airline fees, the airport becomes more attractive to airlines.¹²⁷ For instance, at FLL in Florida:

Non-airline revenues, represented 71.1% of total operating revenues in fiscal year 2016. The main categories of non-airline revenues, rental car revenues, parking revenues, and concessions, have steadily been increasing over the last few years, due to increases in passenger activity and also increases in sales per passenger. This increase in non-airline revenues has contributed to the ability to maintain low terminal rents and landing fees that result in a low CPE [Cost Per Enplanement]. This low-cost structure makes the Airport attractive to air carriers, especially low-cost carriers.¹²⁸

Where state laws have not preempted local authorities from setting TNC airport fees, many airports have reached agreements with the TNCs.¹²⁹ The agreements vary in structure, such as a flat fee or a per-ride fee, and in amounts.¹³⁰ The agreements are products of often tense and lengthy negotiations between *policymakers* and the TNCs.¹³¹ Airport authorities bargain for an agreement that considers the effect of TNCs on the airport, which includes lost revenue from reduced ground transportation, parking,

124. Ahles, *supra* note 110.

125. Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth., 906 F.2d 516, 522 (11th Cir. 1990); Bergal, *supra* note 108.

126. BROWARD CTY. AVIATION DEP'T, *supra* note 115, at 12.

127. *See id.*

128. *Id.*

129. *See* GOODIN & MORAN, *supra* note 2, at 14; e.g., Bergal, *supra* note 108 (Buffalo Niagara International Airport in New York will charge Lyft a three-dollar fee per-ride and Uber a flat fee of \$180,000); Taylor, *supra* note 14 (Newark Airport signed a \$10 million dollar deal with Uber).

130. *See* Bergal, *supra* note 108. Lyft is charged on a per-ride basis, while Uber is charged a flat fee, both agreements were for one year. *Id.*

131. *See* GOODIN & MORAN, *supra* note 2, at 4.

and car rental fees, as well as enforcement costs.¹³² TNCs look for a fee structure that best reflects its operation at that airport and, ultimately, as for-profit entities with shareholders, looking for the lowest cost possible.¹³³

C. *Landscape of TNC Laws at Airports*

Broad preemption language eliminating or limiting the authority of local governments to regulate TNCs is not uncommon in enacted state laws.¹³⁴ However, a significant amount of states carve out exceptions to the preemption for airport and seaport authorities.¹³⁵ Only a small number of states have left their state's airport operator without any authority to impose on TNCs fees or other operational directives.¹³⁶ Within those states, the authority left to airport authorities varies.¹³⁷ The majority of those states allow the airport to set pickup fees and operational directives.¹³⁸ In some instances, states provide parameters under which airport authorities must abide by when setting TNC fees.¹³⁹

132. See Bergal, *supra* note 108. “[O]fficials estimate they could lose more than \$2 million in revenue a year from parking, taxi, and car rental fees because of TNCs” *Id.*

133. See Eric Anderson, *Uber Balks at Airport Process*, TIMES UNION (N.Y.), July 12, 2017, at A1.

134. GOODIN & MORAN, *supra* note 2, at 14.

135. *Id.* at 7, 14.

136. *Id.* at 7. Of the states that have left no authority to airport authorities under respective TNC laws, Colorado is the only state home to a major airport, Denver International Airport. See *id.* at 3; FED. AVIATION ADMIN., CALENDAR YEAR 2016 PRELIMINARY REVENUE ENPLANEMENTS AT COMMERCIAL AIRPORTS 1 (2017), http://www.FAA.gov/Airports/planning_capacity/passenger_allcargo_stats/passenger/media/preliminary-cy-16-commercial-service-enplanements.pdf [https://web.archive.org/web/20170715205149/https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/preliminary-cy16-commercial-service-enplanements.pdf].

137. Compare Act effective July 1, 2017, ch. 2017-12, § 1(15)(b), 2017 Fla. Laws 11 (codified at FLA. STAT. § 627.748(15)(b)) (authority to set pickup fees that must be consistent with those charged to taxicabs), with GA. CODE ANN. § 40-1-191 (2016).

138. See GOODIN & MORAN, *supra* note 2, at 7–14.

139. See GA. CODE ANN. § 40-1-191. One such state is Georgia, home to the busiest airport in the world. FED. AVIATION ADMIN., *supra* note 136, at 1. Georgia limits the fees charged to TNCs—*ride share network services*—and taxi services alike, to “not exceed airport’s approximate cost” of regulating the operation of the entities at the airport. GA. CODE ANN. § 40-1-191.

D. *Florida's Airports & TNCs*

1. Florida's Valuable Airport Opportunity

Florida recently moved ahead of Texas to the number two spot for “overall number of passengers boarding airplanes” in the nation.¹⁴⁰ Since Uber's arrival in Miami, the company's share of the business travelers segment increased from 17% to 67% in just two years.¹⁴¹ As an important and profitable client base for TNCs, the positive trend underlies the importance of TNCs gaining access to Florida's airports.¹⁴² Florida is home to four large hub airports—airports that represent at least 1% of total enplanements in the United States.¹⁴³ All four airports are within the top thirty airports, according to total passenger enplanements 2016.¹⁴⁴ Since Miami-Dade—*Florida's most populous county*—legalized TNCs in May 2016, the \$2 pickup fee imposed on Uber by MIA has translated into over \$2 million in revenue for the airport in one year.¹⁴⁵

2. Airport Authorities Under Florida's TNC Law

Florida is divided by law into sixty-seven *political subdivisions called counties*.¹⁴⁶ As in the rest of the United States, subunits of local governments have been created by law to operate airports in Florida.¹⁴⁷ Florida's airport authorities, through the power derived from their Legislature, “have the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for hire

140. Jim Turner, *Florida Passes Texas in Airport Traffic in 2016*, ORLANDO SENTINEL (Fla.), July 18, 2017, at 8A.

141. Douglas Hanks, *Miami Business Travelers Abandon Taxis for Uber*, MIAMI HERALD (Fla.), Feb. 1, 2017, at 8A.

142. See Close, *supra* note 107.

143. See FED. AVIATION ADMIN., *supra* note 136, at 1. Florida's Large Hub Airports listed by total enplanements in 2016: Miami International Airport (“MIA”), Orlando International Airport (“MCO”), Fort Lauderdale-Hollywood International (“FLL”), and Tampa International (“TPA”). *Id.*

144. *Id.*

145. Taylor, *supra* note 14; Video clip: Univision Report at 2:15–2:25, *Uber y Lyft destronan a los taxistas en el aeropuerto de Miami* [Uber and Lyft Dethrone Taxi Drivers at Miami Airport], UNIVISION COMM., INC.: UNIVISION 23: MIAMI (July 25, 2017, 7:34 PM), <http://www.univision.com/miami/wltv/uber-y-lyft-destronan-a-los-taxistas-en-el-aeropuerto-de-miami-video>.

146. FLA. CONST. art. VIII, § 1(a) (amended 2014); Auslen et al., *supra* note 23.

147. Bacot & Christine, *supra* note 87, at 243; see, e.g., Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth., 825 F.2d 367, 368–69 (11th Cir. 1987).

between such airport or airports and points within such county.”¹⁴⁸ Courts have ruled that airport authorities may charge different fee amounts to different categories of businesses operating in the airport.¹⁴⁹ The airport authority’s justification for the difference in fees is “based upon its rational assessment of the relative benefits and the extent of use of each category of vehicles that enter the airport.”¹⁵⁰ The legitimate purposes supporting the different fees could be many—including the regulation and control of airport roadway traffic, the protection of the public safety, and the need to generate revenue from commercial users of the airport to support the provision of the airport facilities to the public—of which only one is needed to uphold the regulation.¹⁵¹

In general, the main benefit conferred upon a business operating in the airport is the client base of travelers using the airport.¹⁵² In assessing *extent of use*, courts have considered the volume of vehicles that can be accommodated on the airport’s roadways, the number of passengers the vehicle can carry, the safety and security costs associated with the increased traffic congestion, and designated pickup areas as necessary to accommodate the category of users.¹⁵³ Overall, the fees assessed on businesses operating within the airport are formulated by a form of benefit-use analysis.¹⁵⁴ The benefits conferred on each business are not always the same, which typically gives rise to different fee amounts; in upholding differing fee schedules, the Court reasoned:

As the district court found, the on-airport companies receive substantial advantages from their presence in the airport, including *overall customer convenience* and access to *walk up* customers, i.e., customers who do not have reservations to rent a car from a particular company. The on-airport companies, however, pay negotiated rents for the space they lease in the airport terminal and on the airport grounds. Although these rents may be below the actual market value of the property, they do compensate the Authority for the benefits that the on-airport companies receive.¹⁵⁵

148. FLA. STAT. § 331.15(2) (2016); Bacot & Christine, *supra* note 87, at 242, 244.

149. *Alamo Rent-A-Car, Inc.*, 825 F.2d at 372 (upholding different fee schedules for different airport businesses).

150. *Id.* at 371.

151. *Id.* at 371 n.3–4.

152. *Id.* at 373.

153. *Davis v. Miami-Dade Cty. Bd. of Cty. Comm’rs*, 469 F. Supp. 2d 1190, 1195 (S.D. Fla. 2006).

154. *See id.*

155. *Alamo Rent-A-Car, Inc.*, 825 F.2d at 373.

Even though a TNC is “not a common carrier, contract carrier, or motor carrier,” eliminating the statutory application provided, the TNC law allows airport and seaport authorities to charge *reasonable pickup fees*.¹⁵⁶ The pickup fees must be “consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport’s or seaport’s facilities.”¹⁵⁷ In comparing the benefits conferred to TNCs and taxicabs—one being the “prime curbside real estate when it comes to picking up passengers” that taxis and other ground transportation have access to in comparison to the designated locations that TNCs are limited to—there are substantial advantages to both.¹⁵⁸ Taxicabs, unlike TNCs—which are solicited via smartphone application—rely on street hails or, in the case of airport pickups, hails made at the taxicab stand.¹⁵⁹ But, TNCs do not have to wait around in lines to pick up passengers.¹⁶⁰ Furthermore, taxicabs do not pass on the pickup fee to the rider, unlike TNCs; thus, profitability of taxicab companies are affected whereas TNCs are not.¹⁶¹

It is presumed, by the plain and ordinary meaning of the statute’s text, that the Legislature intended to give airport authorities leeway in setting the fee amount because the terms *reasonable* and *consistent with* are imprecise.¹⁶² But with the phrase *consistent with* being used to set the relationship between two monetary amounts, of which the baseline number is less than \$5, it should not result in too big of a difference.¹⁶³ However, when

156. Act effective July 1, 2017, ch. 2017-12, § 1(2), (15)(b), 2017 Fla. Laws 3, 11 (codified at FLA. STAT. § 627.748).

157. *Id.* § 1(15)(b), at 11. The preemption exception provided in Florida’s law is as follows:

(b) This subsection does not prohibit an airport or seaport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport’s or seaport’s facilities or prohibit the airport or seaport from designating locations for staging, pickup, and other similar operations at the airport or seaport.

Id.

158. See Douglas Hanks, *Transportation – Uber Getting Special Zone at Miami International Airport*, MIAMI HERALD (Fla.), May 17, 2016, at 6A; Douglas Hanks, *Taxis Suing Miami-Dade for \$1 Billion over New Uber Law*, MIAMI HERALD (May 4, 2016, 12:41 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article75555187.html> [hereinafter *Taxis Suing Miami-Dade*].

159. See *Taxis Suing Miami-Dade*, *supra* note 158.

160. *Id.*

161. See Will Robinson, *Uber and Lyft Expand Statewide, Thanks to New Florida Law*, BIZJOURNALS: JACKSONVILLE BUS. J. (July 10, 2017, 10:38 AM), <http://www.bizjournals.com/jacksonville/news/2017/07/10/uber-and-lyft-expand-statewide-thanks-to-new.html>.

162. Act effective July 1, 2017, ch. 2017-12, § 1(15)(b), 2017 Fla. Laws 11; Auslen et al., *supra* note 23.

163. See Act effective July 1, 2017, ch. 2017-12, § 1(15)(b), 2017 Fla. Laws 11; Robinson, *supra* note 161 (explaining the airport rates set across some of Florida’s airports

these nominal amounts are applied to the volume of rides currently given, and the exponential growth rate of TNC rides at airports, they amount to large sums of money.¹⁶⁴ Ultimately, despite the potential disparity in the total amount paid, mandating airports to align the fees charged to TNCs with those of taxicabs, fits squarely into the benefits and extent of use formulation previously used by the courts.¹⁶⁵ Furthermore, in setting different regulatory frameworks applicable to different users, the airport authorities do not need to “achieve perfection or mathematical exactitude,” which is in line with the statutory text in Florida’s TNC law.¹⁶⁶

Moreover, the criteria set by Florida’s TNC law on airport pickup fees is in accordance with the limited input from the FAA on non-aeronautical fees.¹⁶⁷ The FAA, in reference to the *self-sustaining* requirement for receipt of grants, has provided that “[f]air market fees for use of the airport are required for non-aeronautical use of the airport.”¹⁶⁸ Though the FAA guidance is centered more on market fees for rental rates of airport facilities, it could be construed to have a general application on airport facilities for non-aeronautical use as a whole.¹⁶⁹ For instance, a TNC law expressly requires that the fees charged at airports must be in line with FAA regulations.¹⁷⁰ In general, the *self-sustaining* assurance tied to FAA grants goes hand in hand with airports charging competitive market-based pricing for all non-aeronautical fees.¹⁷¹ Such fees “can be determined by reference to negotiated fees charged for similar uses of the airport,” which is precisely the criteria provided in Florida’s TNC law.¹⁷²

are as follows: “Miami International Airport currently charges \$2, Fort Lauderdale-Hollywood International Airport charges \$3, Palm Beach International charges \$2.50, Tampa International Airport charges \$3.”).

164. See Video clip: Univision Report, *supra* note 145, at 2:15–2:25.

165. See *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 825 F.2d 367, 371–72 (11th Cir. 1987).

166. *Id.* at 371; see also Act effective July 1, 2017, ch. 2017-12, § 1(15), 2017 Fla. Laws 11.

167. See Act effective July 1, 2017, ch. 2017-12, § 1(15)(b), 2017 Fla. Laws 11; FED. AVIATION ADMIN., ORDER 5190.6B, FAA AIRPORT COMPLIANCE MANUAL: CHAPTER 17-SELF-SUSTAINABILITY (2009).

168. FED. AVIATION ADMIN., *supra* note 167.

169. Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7721 (Feb. 16, 1999) (explaining that self-sustaining assurance extends to the airport receiving fair market value for providing non-aeronautical facilities and services).

170. S.C. CODE ANN. § 58-23-1710(c)(1) (2016); Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. at 7710.

171. See 49 U.S.C. 47107 (2012); FED. AVIATION ADMIN., *supra* note 167.

172. FED. AVIATION ADMIN., *supra* note 167; see also Act effective July 1, 2017, ch. 2017-12, § 1(15), 2017 Fla. Laws 11.

V. WHY FLORIDA'S TNC LAW GIVES TNCs A FREE RIDE

A. *Potential Issues: Oversight*

The TNC driver requirement provision, included in the bi-annual research report, is the most important safeguard of the public, because before the TNC driver can begin driving, the driver must submit: an application containing basic personal and vehicle information to the TNC, a local and national background check is conducted by the TNC or third-party, and a driving history research report is obtained and reviewed.¹⁷³ The law prohibits TNCs from authorizing a TNC driver to operate if the information obtained on the driver through the background check reveals certain convictions and driving infractions.¹⁷⁴ But since the TNC's compliance with the provision would not be confirmed until the bi-annual check, the TNC's non-compliance could expose riders and other drivers to harm, especially because the law leaves it up to the TNC or a third-party not specified in the law's text, to conduct the criminal and driving check.¹⁷⁵ The foregoing state conducted background checks revealed the degree of confidence state legislators have in TNCs, which have been shown to be a mistake.¹⁷⁶ Furthermore, the law mandates that TNCs retain individual ride records and driver records for one year after the date of the ride and for one year after the

173. Act effective July 1, 2017, ch. 2017-12, § 1(11), 2017 Fla. Laws 8; *see also* Adam Vaccaro & Dan Adams, *Thousands of Current Uber, Lyft Drivers Fail New Background Checks*, BOS. GLOBE (Mass.), Apr. 5, 2017, at A1.

174. Act effective July 1, 2017, ch. 2017-12, § 1(11)(d), 2017 Fla. Laws 9. If an initial or subsequent background check of a prospective driver reveals any of the following, the TNC may not authorize the driver to operate on the TNC's platform:

1. Has been convicted, within the past 5 years, of:
 - a. A felony;
 - b. A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer; or
 - c. A misdemeanor for a violent offense or sexual battery, or a crime of lewdness or indecent exposure under chapter 800;
2. Has been convicted, within the past 3 years, of driving with a suspended or revoked license;
3. Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;
4. Does not possess a valid driver license; or
5. Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

Id.

175. *See id.* § 1(11)(a)(2), (b) at 8–9 (requiring TNCs to conduct background checks for TNC drivers every three years); Vaccaro & Adams, *supra* note 173 (stating that Uber conducts criminal background checks on its drivers twice a year).

176. *See* Vaccaro & Adams, *supra* note 173.

date that a TNC driver's relationship with the TNC ends, respectively.¹⁷⁷ If a bi-annual compliance check were to reveal non-compliance regarding driver authorization one year after a bi-annual check, relevant ride records or driver records—or both—would not, by law, be required to be maintained by the TNC.¹⁷⁸

B. *Lack of Economic Support*

Before Florida enacted its TNC law, most of the local governments in the state had put together TNC regulations that allowed the companies to operate legally.¹⁷⁹ Though the local regulations had created “a patchwork of local regulations that were in conflict to each other,” the regulations, in general, provided the local governments that would be enforcing the operation of TNCs with funds to defray the administrative and operational oversight required.¹⁸⁰ Miami-Dade County adopted a TNC license fee of \$26 per vehicle that generated about \$1.8 million for the County.¹⁸¹ Similarly, Hillsborough County came to an agreement with Uber and Lyft to pay \$250,000 and \$125,000 in annual fees, respectively.¹⁸² However, Florida's TNC law excludes any permit, fee, or license requirements for TNCs to operate, except for pickup fees at airports.¹⁸³

The preemption provision in Florida's TNC law states that “TNCs, TNC drivers, and TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017;” essentially eliminating all local regulations, including licensing requirements enacted before the law's effective date.¹⁸⁴ The law further prohibits local governments from imposing any future economic or administrative regulation on TNCs.¹⁸⁵

11. 177. Act effective July 1, 2017, ch. 2017-12, § 1(14)(a)–(b), 2017 Fla. Laws

178. See *id.* § 1(11)(d), (14)(a)–(b), at 9, 11.

179. See Auslen et al., *supra* note 23.

180. See *id.*; e.g., Garin Flowers, *Hillsborough Reaches Deal with Uber, Lyft*, WTSP (Nov. 9, 2016, 11:25 PM), <http://www.wtsp.com/news/local/hillsborough-reaches-deal-with-uber-lyft/350501652>.

181. CHARLES ANDERSON, OFFICE OF COMM’N AUDITOR, BOARD OF COUNTY COMMISSIONERS MEETING 4 (May 3, 2016, 9:30 AM), <http://www.miamidade.gov/auditor/library/2016-05-03-board-of-county-commissioners.pdf>; Auslen et al., *supra* note 23.

182. Flowers, *supra* note 180.

183. Act effective July 1, 2017, ch. 2017-12, § 1(15)(a), 2017 Fla. Laws 11.

184. *Id.*

185. See *id.*

A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides;
2. Subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
3. Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.¹⁸⁶

Florida is not the only state that does not charge TNCs an upfront annual cost to operate, but is one of the few among comparable states not to.¹⁸⁷ The decision to not impose any administrative or operational costs on TNCs foregoes source funds for local governments that could have been allocated to defray costs associated with the significant and increasing presence of TNCs across the state.¹⁸⁸ Like airports, local governments must harmonize capital expenditures with available and potential sources of funds, but unlike airports, local governments were not afforded the same discretion under Florida's TNC law.¹⁸⁹ An analysis provided by the House of Representative Staff concluded that as a result of the revenue elimination from fees imposed on TNCs by local governments after the law's preemption, local governments "will experience an indeterminate, but likely insignificant, negative fiscal impact."¹⁹⁰ The same report concluded that the airport preemption exception "may provide a positive fiscal impact to

186. *Id.*

187. See GOODIN & MORAN, *supra* note 2, at 7–8; BRUCE SCHALLER, UNFINISHED BUSINESS: A BLUEPRINT FOR UBER, LYFT AND TAXI REGULATIONS 3 (2016), <http://schallerconsult.com/rideservices/blueprint.pdf>; Robinson, *supra* note 161.

188. See Auslen et al., *supra* note 23; Tan, *supra* note 121.

189. See Auslen et al., *supra* note 23; Kevin Spear, *Orlando Airport Officials OK \$350 Million Price Hike for New Terminal*, ORLANDO SENTINEL (June 21, 2017, 4:50 PM), <http://www.orlandosentinel.com/travel/news/os-airport-terminal-cost-vote-20170621-story.html>. At Orlando International Airport in Florida, airport officials met and approved a \$350 million cost increase in the construction of a new terminal; in that same meeting, officials set TNC pick up fees at \$5.80, which is the highest fee in the United States and significantly higher than the \$3.30 charged to on-demand taxi services. *Uber, Lyft Pick Up Now Allowed at Orlando Airport*, CBS MIAMI (June 22, 2017, 2:26 PM), <http://miami.cbslocal.com/2017/06/22/ubert-lyft-pick-up-now-allowed-at-orlando-airport/>.

190. Fla. H.R. Comm. on Transp. & Infrastructure, HB 221 (2017) Staff Analysis 8 (Feb. 14, 2017).

airports;” the assertion has proved accurate in 2016, Miami International Airport received over \$2 million from Uber in pickup fees.¹⁹¹

VI. CONCLUSION

The arrival of TNCs to the Sunshine State has been a blessing for some; for others, it has been a lesson in how dynamic, technology-driven business can disrupt and cripple an established player in an established market.¹⁹² For local and state lawmakers, it is only one of the many regulatory battles to come as technology companies continue to emerge and disrupt outdated regulations.¹⁹³ No longer should legislators be reluctant adopters of new technologies and businesses in an effort to save the old because “[w]ere the old deemed to have a constitutional right to preclude the entry of the new into the markets of the old, economic progress might grind to a halt.”¹⁹⁴

Whether Florida’s TNC law will be considered an example of a successful statewide TNC regulation remains to be seen.¹⁹⁵ What the law provided—much to the satisfaction of the TNCs—was rational insurance requirements, parameters on TNC driver authorizations that mirrored those the TNCs currently had in effect, minimal administrative and regulatory costs, and oversight limited to a bi-annual retroactive compliance check.¹⁹⁶ The law is extremely favorable to TNCs, but it ultimately enables thousands of Floridians to gain a supplemental income, allows millions to continue utilizing their preferred means of transportation, and injects millions of dollars into Florida’s airports, but nothing into the municipalities whose infrastructures and resources feed the exponential growth of TNCs.¹⁹⁷

191. *Id.* at 9; Video clip: Univision Report, *supra* note 145, at 2:15–2:25.

192. See Douglas Hanks & Rene Rodriguez, *For Uber, Loyal Drivers and a New Fight for Benefits*, MIAMI HERALD (May 21, 2015, 4:17 PM), <http://www.miamiherald.com/news/business/article21599697.html>. “Since the company launched in Miami-Dade in June 2014, more than 10,000 active driver-partners have taken home more than \$30 million through more than three million rides the company said this week — net which [does not] include above the company’s commission, typically less than [twenty] percent.” *Id.*; see also Video clip: Univision Report, *supra* note 145, at 2:08–2:47.

193. See Ducassi, *supra* note 26.

194. Order Granting Defendant’s Motion to Dismiss at 16, *Miadeco Corp. v. Miami-Dade Cty.* No. 16-21976-CIV (S.D. Fla. Apr. 10, 2017) (quoting *Ill. Transp. Trade Ass’n v. City of Chi.*, 839 F.3d 594, 597 (7th Cir. 2016)).

195. See SCHALLER, *supra* note 187, at 18.

196. Act effective July 1, 2017, ch. 2017-12, § 1(7)–(9), (11)(e) 2017 Fla. Laws 4–8; Robinson, *supra* 161.

197. See Video clip: Univision Report, *supra* note 145, at 2:20–3:29; Ducassi, *supra* note 26.